

Notice of Allowability

Application No.

10/630,590

Examiner

Zachariah Lucas

Applicant(s)

LU ET AL.

Art Unit

1648

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the response of May 15, 2007.
2. ☒ The allowed claim(s) is/are 1,3-5,10-15,21,22 and 24-26.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☐ Interview Summary (PTO-413),
Paper No./Mail Date _____
7. ☒ Examiner's Amendment/Comment
8. ☐ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

DETAILED ACTION

1. Currently, claims 1, 3-5, and 10-15, 21, 22, and 24-26 are pending and allowed.
2. In the prior action, the Final action mailed on April 6, 2007, claims 1, 3-8, and 10-22, and 24-28 were pending in the application; with claims 6-8, 27, and 28 withdrawn from consideration; and claims 1, 3-5, 10-15, 21, 22, and 24-26 under consideration and rejected.
3. In the After-Final amendment of May 15, 2007, the Applicant cancelled claims 6-8, 16-20, 27, and 28; and amended claim 24. In view of the amendment of claim 24, and the Declaration of Lu et al., the finality of the prior action, mailed on April 6, 2007, is withdrawn, and the pending claims are found allowable.

Claim Objections

4. **(Prior Objection- Withdrawn)** Claim 24 was objected to because it appeared that the phrase "with heterologous domain" in line 6 of the claim should read - - with a heterologous domain- -. In view of the amendment, the objection is withdrawn.

Claim Rejections - 35 USC § 103

5. **(Prior Rejections- Withdrawn)** Claims 1, 3-5, 10-13, 15, 21, 22, and 24-26 were rejected under 35 U.S.C. 103(a) as being unpatentable over the teachings of Davis (U.S. 5,610,077) in view of Thomas et al. (Oncogene 20: 5431-39) and Bleul (U.S. 5,753,233). Claim 14 was rejected under 35 U.S.C. 103(a) as being unpatentable over Davis in view of Bleul and Thomas as applied above, and further in view of Kehmeier et al. (Virology 299: 72-87).

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The Declaration filed on May 15, 2007 under 37 CFR 1.131 is sufficient to overcome the Thomas reference. The rejection is therefore withdrawn.

Double Patenting

6. **(Prior Rejections- Withdrawn)** Claims 1, 3-8, 10-15, and 24-26 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 3, 4, 8, 9, and 10 of copending Application No. 10/847,818 further in view of the teachings of Thomas. Because this application is the earlier filed application, and other rejections are still of record in the '818 application, and in view of the Declaration indicating that the claimed invention had been conceived and reduced to practice prior to the Thomas publication, the provisional rejection is withdrawn.

7. **(Prior Rejection- Withdrawn)** Claims 1, 3-8, 10-15, and 24-26 were provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-15 of copending Application No. 11/053076. In view of the abandonment of the copending application, the provisional rejection is withdrawn.

Conclusion

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Zachariah Lucas whose telephone number is 571-272-0905. The examiner can normally be reached on Monday-Friday, 8 am to 4:30 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bruce Campell can be reached on 571-272-0974. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Z. Lucas/
Patent Examiner, AU 1648